

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

THOMAS OTTER ADAMS, #100 612 *
Plaintiff, *
v. * 2:06-CV-873-ID
WARDEN GWENDOLYN MOSLEY, *et al.*, *
Defendants. *

ORDER ON MOTION

Pending before the court is an affidavit filed by Plaintiff wherein he states that he is unable to comply with the court's October 18, 2006 order directing payment of an initial partial filing fee. In support of his motion Plaintiff asserts that he does not have sufficient funds in his inmate account to comply with the court's October 18 order.

The court has considered Plaintiff's affidavit and construes it as a request that he be allowed to proceed in this action without prepayment of the initial partial filing fee until such funds became available to him. Upon consideration of the motion, the court concludes that the motion shall be granted. Plaintiff is advised, however, that this court must, under the provisions of 28 U.S.C. § 1915(b)(1), "assess and, when funds exist, collect" the \$350.00 filing fee from monies available to Plaintiff, when the amount in Plaintiff's account exceeds \$10.00. The court may not waive or exempt Plaintiff from compliance with the statutory provisions regarding payment of filing fees.

Accordingly, it is

ORDERED that Plaintiff's November 7, 2006 pleading, construed as Motion to Proceed Without Payment of the Court-Ordered Initial Partial Filing Fee Until Funds Become Available (Doc. No. 12), be and is hereby GRANTED.

Done, this 8th day of November 2006.

/s/Charles S. Coody

CHARLES S. COODY
CHIEF UNITED STATES MAGISTRATE JUDGE